

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2223 OF 2018

SURESH PREMRAJ MUTHA
VERSUS
THE MUNICIPAL CORPORATION AURANGABAD THROUGH ITS
MUNICIPAL COMMISSIONER AURANGABAD

...
Advocate for the Petitioner : Shri P.F.Patni h/f Shri Bajaj Anil S..
Advocate for the Respondent : Shri S.S.Tope.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 28th February, 2018

Per Court:

1 The Petitioner is aggrieved by the order dated 29.01.2018 passed by the Trial Court by which, the application Exhibit-50 filed by the Petitioner/ Plaintiff in RCS No.81/2017, has been rejected and the Trial Court has declined to modify the issues cast by it on 09.10.2017.

2 The learned Advocate for the Petitioner submits that the Petitioner/ Plaintiff has filed the suit seeking perpetual injunction against the Aurangabad Municipal Corporation and therefore, desires that the Municipal Corporation should not interfere with his peaceful possession and enjoyment over the suit property. It is further contended that once the Plaintiff has put forth the claim only for injunction, no other issue is required to be gone into and probed into and it is only required to be seen

whether, the Plaintiff is in possession of the property with reference to which an injunction is sought.

3 Reliance is placed upon the judgment of the Honourable Supreme Court in the matter of Ramchandra Dagdu Sonavane (dead) by L.Rs. and others vs. Vithu Hira Mahara, (2009) 10 SCC 273 and especially the observations of the Honourable Supreme Court in paragraph 50, which reads as under :-

"50. In a suit for injunction, the issues and the decision would be confined to possessory aspect. If the right to possession of property cannot be decided without deciding the title to the property and a person who approaches the Court, his status itself is to be adjudicated then without declaring his status, the relief could not be granted. In earlier suit Vithu claimed his right as an adopted son. Therefore, since he did not prove the adoption, there was no subsisting right or interest over the immovable property and as such the issue on adoption was a relevant issue in 1953 suit and, therefore, the said issue which has been decided in earlier suit and which has been confirmed in the regular second appeal and the issue decided therein was whether he was an adopted heir of Watandar was binding on the parties. The similar question has to be decided by the S.D.O. to decide the claim, right or interest in respect of the hereditary office. Therefore, the issue was raised and it was decided and it is binding on the parties."
(Emphasis supplied).

4 Reliance is also placed upon the judgment of this Court in the matter of Shekoji Bhimrao and others vs. Motiram Maruti Maratha and others, 2007 (1) Mh.L.J. 747.

5 The learned Advocate for the Respondent/ Municipal Corporation has drawn my attention to the fact that the Petitioner was prompted to file the suit since the Municipal Corporation has issued a notice to him with regard to the encroachment indulged into by him. By the said notice, the Municipal Corporation intends to demolish the room that has been constructed by the Plaintiff on the property in the city which is CTS No.14503/1 admeasuring 6548 square meters. The Plaintiff had no reason to approach the Trial Court with the suit except on account of the notice having been issued by the Municipal Corporation after realizing that though the entire suit property belongs to the Municipal Corporation, the Plaintiff has encroached upon the same and has erected the room structure.

6 He further points out from the Written Statement filed by the Municipal Corporation that it is specifically averred in paragraphs 1, 3 and 5 that the suit property bearing CTS No.14503/1 from Sheet No.129 and 138 and old Survey No.52 admeasuring 8648 square meters along with Survey No.54, belongs to the Aurangabad Municipal Corporation. The purported sale deed is also denied by the Municipal Corporation. The ownership is reiterated by the Municipal Corporation based on the old revenue records as "Khasra Patra" and "Pahani Patra". The contention of the Plaintiff that he gets a marketable right since his vendor had a marketable right and ownership of the suit property, was also denied. It is,

therefore, contended that when the Plaintiff avers that his vendor has a marketable right and ownership in the suit property and he has acquired lawful possession on the basis of the sale deed, it would mean that the Plaintiff is also indirectly claiming that he has a marketable right and ownership.

7 He then draws my attention to Order 14 Rule 1 of the Code of Civil Procedure to contend that the issues to be framed by the Trial Court are based on the material proposition of facts and law as is affirmed by the first party and denied by another party. He, therefore, contends that though the Plaintiff may have shrewdly avoided using of the word "ownership", the suit for injunction goes to the root of the matter which lies in the notice for demolition as the Municipal Corporation contended that the suit property is owned and belongs to the Municipal Corporation.

8 I find that the contention of the Plaintiff on the premise that since he is seeking injunction simplicitor, the Court should not look any further, is fallacious and misleading. Even the Honourable Supreme Court has concluded in the above reproduced paragraph 50 of the Ramchandra case (supra) that if the right to possession of the property cannot be decided without deciding the title to the property as his status itself is to be adjudicated, then without declaring his status, the relief could not be granted.

9 In the above backdrop, it is obvious that the Trial Court has

considered the effect of Order 14 Rule 1 of the Code of Civil Procedure and has noted from the averments of the Municipal Corporation that the issue of ownership will have to be gone into if any relief is to be granted to the Plaintiff. If the Plaintiff is not in lawful possession of the suit property, the construction erected will be proved to be an encroachment as the land would be proved to be belonging to the Municipal Corporation.

10 Considering the above, I do not find that the Trial Court has committed any error in passing the impugned order. Considering the law laid down by the Honourable Supreme Court in the matters of *Syed Yakoob v/s K.S.Radhakrishnan*, **AIR 1964 SC 477** and *Surya Dev Rai v/s Ram Chander Rai*, **AIR 2003 SC 3044**, unless an order appears to be perverse, erroneous and is likely to cause gross injustice, no interference is called for.

11 As such, this Writ Petition being devoid of merit is, therefore, dismissed.